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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,416	09/27/2001	Richard Mertens	KST-02	3812
26875	7590	05/30/2003		
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			EXAMINER MORRIS, ANDREW P	
			ART UNIT 2857	PAPER NUMBER

DATE MAILED: 05/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Offic Action Summary</b>	Application N .	Applicant(s)
	09/965,416	MERTENS ET AL.
	Examiner Andrew P Morris	Art Unit 2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 September 2001.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-13 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____.                                   |

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***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Drawings***

2. Figure 1 is objected to because it does not include functional labels for elements 9 and 11. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Objections***

3. Claims 4, 5, 8, 9, 12 and 13 recite the limitation "number of sensors" in the second line of each of these claims. There is insufficient antecedent basis for this limitation in the claims. The parent claims, on which claims 4, 5, 8, 9, 12 and 13 depend, recite the existence of only a single sensor.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 10-13 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the

invention. The specification does not disclose how a 3-D image measurement of the contents of a blister package can be made using an optical sensor while the contents of the package are still contained within the package. It is the examiner's belief that the package will interfere with any attempt to create a 3-D measurement of the contents of the blister package through optical means.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 10-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear to the examiner what the applicant means by "an optical three-dimensional image detection sensor", which is presumably capable of generation an image of a substance contained within a package.

8. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481

(Bd. App. 1949). In the present instance, claims 1-13 recite the broad recitation “content of pockets of a blister package”, and the claim also recites “pharmaceuticals” which is the narrower statement of the range/limitation. Also, claim 6 recites the broad recitation “capacitive test probe”, and the claim also recites “which preferably measures the induced dipol moment in any give volume of any material by means of a high frequent alternating field” which is the narrower statement of the range/limitation.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nantel et al. (US Publication No. 2001/0052986) in view of Dam (US Patent No. 5,880,364).

In regard to claim 1, Nantel et al. disclose a blister package filling method that includes the step of filling a blister package with a predetermined volume (par. 5). Nantel et al. do not disclose supplying a detected volume value to an evaluation unit and comparing the detected value with a target value. Dam discloses a method for checking the content of a container that is filled with a liquid substance, said method comprising the steps of detecting a filled volume value of said substance by means of a sensor (col. 3, lines 63-66), supplying said detected volume value to an evaluation unit (col. 4, lines 46-50) and comparing said detected volume value with a volume target value by means of said evaluation unit (col. 4, lines 46-50. It would

have been obvious to one of ordinary skill in the art at the time of invention to modify the system disclosed by Nantel et al. to include the blister package content volume measurement of Dam in order ensure that the packages were being filled with the correct volume.

In regard to claim 2, Nantel et al., as modified above, disclose the step of displaying a comparison value derived from the comparison of said detected volume value with said volume target value by means of a display device (Dam, col. 4, lines 46-50).

In regard to claims 3 and 4, Nantel et al., as modified above, disclose the step of detecting each pocket of a blister package by means of a sensor (Dam, col. 6, lines 6-7). The combined references further provide for a plurality of sensors arranged in a line formation wherein the number of sensors in the line of sensors corresponds to the number of pockets in a package (Figure 3).

In regard to claim 5, Nantel et al., as modified above, disclose a multiple-sensor device wherein the number of sensors corresponds to the number of pockets in a blister package with either a single row or column (Dam, Figure 3).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nantel et al. (US Publication No. 2001/0052986) in view of Tyberg et al. (US Patent No. 6,270,726). Nantel et al. disclose a blister package filling method that includes the step of filling a blister package with a predetermined volume (par. 5). Nantel et al. do not disclose supplying a detected volume value to an evaluation unit and comparing the detected value with a target value. Tyberg et al. disclose a method for checking the content of a container that is filled with a liquid substance, said method comprising the steps of detecting a filled volume value of said substance by means of a sensor (col. 3, lines 14-20), supplying said detected volume value to an evaluation unit and

comparing said detected volume value with a volume target value by means of said evaluation unit (col. 6, lines 18-21). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the system disclosed by Nantel et al. to include the blister package content volume measurement of Tyberg et al. in order ensure that the packages were being filled with the correct volume.

11. Claims 7, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nantel et al. in view of Tyberg et al. as applied to claim 6 above, and further in view of Dam (US Patent No. 5,880,364).

In regard to claims 7 and 8, Nantel et al., as modified above by Tyberg et al., do not disclose a sensing device comprising a number of sensors that corresponds to the number of pockets in a row of the package. Dam discloses a volume-measuring device that has a number of sensors that corresponds to the number of pockets in a row of a blister package (Dam, Figure 3). It would have been obvious to one of ordinary skill in the art at the time of invention to modify Nantel et al. to implement a plurality of sensing devices, wherein the number of said sensing devices corresponded to the number of pockets in a row of a blister package, in order to make a quicker determination of the volume of the contents in each of the separate pockets of a blister package.

In regard to claim 9, Nantel, as modified above (in regard to claims 7 and 8), discloses a multiple-sensor device wherein the number of sensors corresponds to the number of pockets in a blister package that has either a single row or single column (Dam, Figure 3).

### *Conclusion*

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12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. De Caris et al. (US Patent No. 5,750,938) disclose a device that uses a capacitive sensor to weigh the contents of a capsule.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew P Morris whose telephone number is (703) 605-4213. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S Hoff can be reached on (703) 308 1677. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7414 for regular communications and (703) 746-7414 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-3431.

apm  
May 20, 2003

  
MARC S. HOFF  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800